



San Bernardino County
Flood Control District

F A S

STANDARD CONTRACT

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	Vendor Code	SC	Dept.	A	Contract Number	
County Department San Bernardino County Flood Control District			Dept.	Orgn.	Contractor's License No.	
County Department Contract Representative Ken Miller/Alan Marks			Telephone 387-7906		Total Contract Amount	
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason:						
Commodity Code		Contract Start Date		Contract End Date		Original Amount
Amendment Amount						
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Project Name Contract for Professional Services			Estimated Payment Total by Fiscal Year			
			FY	Amount	I/D	

THIS CONTRACT is entered into in the State of California by and between the District, hereinafter called the District, and
Name

Berger & Norton

Address

12121 Wilshire Blvd., Suite 1300

Los Angeles, CA 90025

Telephone

(310) 979-2500

Federal ID No. or Social Security No.

hereinafter called Consultants

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

WHEREAS, District has determined that it is in the best interest of District to retain Consultants to advise and assist in the representation of the District in connection with a court case entitled The Colonies Partners v. San Bernardino County Flood Control District bearing case No. RCV 061971; and

WHEREAS, Consultants have special skills, knowledge, experience and expertise in the area of Real Property law and related issues to advise, assist, provide testimony, and otherwise represent the District on such matters; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

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1. **Representation of District.** District hereby retains the services of Consultants as an independent contractor to advise and assist in the representation of the District and its officers and employees in the matters referred to above in the first WHEREAS Clause, and to provide such other advice, services and representation on related matters as may be assigned by the County Counsel.
2. **Performance of Services and Hourly Rates.** It is agreed that Consultants shall only assign persons to perform services under this Agreement who are approved by the District for performing the services for the District and that when feasible Consultants will use lower compensated employees in order to reduce the costs of services to District. The District agrees that the persons listed in Exhibit "A" may perform the services under this Agreement. The parties agree that the hourly rate for each of the above consultants and other consultants who shall be approved to work under this Agreement shall be as listed on the Consultant's attached Standard Hourly Billing Rates, Exhibit "A."
3. **Coordination of Services.** Consultants shall consult with the District through County Counsel in the course of advice pursuant to this Agreement.
4. **Billing.** Consultants shall submit monthly statements to County Counsel for fees and costs for services performed under this Agreement and District shall pay its obligations to Consultants within a reasonable time after receipt of billings. Such monthly statements shall indicate the services performed, the person(s) performing the services and provide an accounting of work time spent for which payment is requested under this Agreement. Fees will be charged in one-tenth hour increments.
5. **Term and Termination.** Consultants and District reserve the right in their discretion to terminate this Agreement at any time Consultants or District deem necessary or advisable upon fifteen (15) days written notice to the other party. Upon receipt of such notice of termination, Consultants shall provide no further services to District without specific request or authorization of the County Counsel. In the event of termination of this Agreement Consultants shall immediately provide District with all materials, documents and work product related to services performed under this Agreement.
6. **No Assignment.** The experience, skill and expertise of Consultants are of the essence to this Agreement. Consultants shall not assign (whether by assignment or novation) this Agreement or delegate their duties hereunder in whole or in part or any right of interest hereunder without the prior written consent of District.
7. **Amendment.** This Agreement may be amended or modified only by written agreement signed by each of the parties, and a failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or provisions.

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8. **County Counsel's Authority.** The County Counsel of District shall have the authority to exercise District's rights and authority under this Agreement.
9. **Notices.** All notices herein required shall be in writing, and delivered in person or sent by certified mail, postage prepaid, addressed as follows:

Consultants:

Thomas Freiberg, Jr. _____
12121 Wilshire Blvd., Ste 1300 _____
Los Angeles, CA 90025 _____

District:

Alan K. Marks, County Counsel
County Government Center
385 North Arrowhead Avenue
San Bernardino, California 92415-0140

or at such other address or to such other persons as either of the parties may from time to time designate by written notice given as herein provided. Notice given by mail as required above shall be deemed delivered three (3) County business days after mailing.

11. **Conflicts.** Consultants shall disclose any conflict circumstance to District and obtain any needed approval or waiver by District and its officers. Any document evidencing such disclosure and any document evidencing such approval or waiver shall be deemed to be a part of this Agreement.
12. **Hold Harmless and Insurance.**

a. Insurance - Consultants shall secure and maintain throughout the Agreement the following types of insurance with limits as shown.

(1) **Workers' Compensation** - A program of Workers' Compensation insurance or a state-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons providing services on behalf of that party and all risks to such persons under this contract.

(2) **Comprehensive General and Automobile Liability Insurance** - This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

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(3) **Errors and Omissions Liability Insurance** - Combined single limits of \$1,000,000 for bodily injury and property damage and \$3,000,000 in the aggregate, or

(4) **Professional Liability** - Professional liability insurance with limits of at least \$1,000,000 per claim or occurrence.

b. Policies Primary and Non-Contributory - All policies, except for the Workers' Compensation, required above are to be primary and noncontributory with any insurance or self-insurance programs carried or administered by the District.

c. Proof of Coverage - Consultants shall immediately furnish certificates of insurance to the District evidencing the insurance coverage, including endorsements, required in b. (1), (2) and (4) prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the District, and Consultants shall maintain such insurance from the time Consultants commence performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this contract, the Consultants shall furnish certified copies of the policies and all endorsements.

d. Insurance Review - The above insurance requirements are subject to periodic review by the District. The District's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the District. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the District, inflation, or any other item reasonably related to the District's risk. Any such reduction or waiver for the entire term of this Agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Consultants agree to execute any such amendment within thirty (30) days of receipt.

e. Failure to Have Insurance - In the event District receives a notice of cancellation concerning any of the required policies, or should fail to have in effect the required coverage at any time during this Agreement, District may give notice to Consultants to immediately suspend all activities and/or notice to reinstate or acquire the affected coverage. Should Consultants fail to reinstate or acquire the affected coverage within ten (10) days of District's notice to reinstate or acquire such coverage, District may either terminate this Agreement, reinstate or acquire the affected coverage, and Consultants shall reimburse District for the necessary cost at District's option. If Consultants do not reimburse District within ten (10) days after demand by District, District shall have the right to withhold from future amounts due under this Agreement or otherwise due to Consultants the sum District has expended until District is reimbursed in full.

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13. **Venue.** The parties acknowledge and agree that this Agreement was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. Notwithstanding this, the parties agree that the venue for any action or claim brought by any party to this Agreement will be the Central District of San Bernardino County. Each party hereby waives any law or rule of court that would allow them to request or demand a change of venue.
14. **Former District Officials.**
- a. Consultants agree to provide or has already provided information on former DISTRICT administrative officials (as defined below) who are employed by or represent Consultants. The information provided includes a list of former District administrative officials who terminated DISTRICT employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Consultants. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, District department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.
- b. If during the course of the administration of this Agreement, the District determines that the Consultant has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the District, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, the District is entitled to pursue any available legal remedies.
- c. The District desires to retain consultants as an expert witness for the District. District and the County Counsel agree that consultant's service in that capacity will not be a basis to disqualify or prevent Berger & Norton from being adverse to District or any other governmental entity of the County of San Bernardino in any future litigation.
15. **Agreement.** The above terms and conditions constitute the complete agreement between the parties hereto. This Agreement was jointly prepared by both parties and the language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be hereunto subscribed by

COUNTY OF SAN BERNARDINO

►
Dennis Hansberger, Chairman, Board of Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS

(Print or type name of corporation, company, contractor, etc.)

By ►

(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

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DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD
Clerk of the Board of Supervisors
of the County of San Bernardino.

By _____
Deputy

Title _____
(Print or Type)

Dated: _____

Address _____

Approved as to Legal Form

▶ _____
County Counsel

Date _____

Reviewed by Contract Compliance

▶ _____

Date _____

Presented to BOS for Signature

▶ _____
Department Head

Date _____